IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

ERIC PAUL AKINS — PLAINTIFF

VS. — CIVIL ACTION NO. 2:99cv160-B-B

JAMES RILEY, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SHERIFF OF DESOTO COUNTY, MISSISSIPPI; JANET TAYLOR, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS THE ADMINISTRATOR OF THE DESOTO COUNTY JAIL; DR. ROBERT MEACHAM III, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS MEDICAL DOCTOR FOR THE DESOTO COUNTY JAIL, DESOTO COUNTY MISSISSIPPI; JAMES ANDERSON, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS THE COMMISSIONER OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, ARTHUR SMITH, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS THE WARDEN OF THE GREENWOOD LEFLORE RESTITUTION CENTER; AND THE COUNTY OF DESOTO MISSISSIPPI — DEFENDANTS

MEMORANDUM OPINION

This cause comes before the court upon the summary judgment motions of defendants James Albert Riley, Janet Taylor and County of Desoto, Mississippi (herein referred to collectively as the "county defendants") and of Dr. Robert Meacham III, as well as the county defendants' supplement to their motion for summary judgment. Upon due consideration of the defendants' memoranda and exhibits, the record in this cause and finding that the plaintiff has failed to respond to said motions, the court is ready to rule.

FACTS

On or about August 8, 1998, the plaintiff, Eric Paul Akins, was arrested for burglary. *See* Complaint, ¶ 10; Deposition of Eric Akins, p. 11, lines 9-12; county defendants' itemization of facts in support of motion for summary judgment, ¶ 1. During the attempted burglary, the plaintiff was

injured by placing his arm through a glass window. *See* Deposition of Eric Akins, p. 13, lines 13-17; county defendants' itemization of facts in support of motion for summary judgment, ¶ 2. He was taken by ambulance to Baptist Desoto Hospital and was treated for the injury by an emergency room doctor, Dr. Black.[1] *See* Complaint, ¶ 11; Deposition of Eric Akins, p. 15, lines 5-11; county defendants' itemization of facts in support of motion for summary judgment, ¶ 3. Upon receipt of medical treatment for his injury, the plaintiff was transported to the Desoto County jail. Id. Dr. Black provided the police officer or deputy who accompanied the plaintiff to jail with a prescription for the plaintiff's pain, but did not provide further instructions for care of the wound to the plaintiff.[2] *See* Deposition of Eric Akins, p. 16, line 2; 14-17.

Upon arriving at the Desoto County jail, the plaintiff was complaining about pain in his arm. *See* Complaint, ¶ 15; Deposition of Eric Akins, p. 16, lines 8-13; county defendants' itemization of facts in support of motion for summary judgment, ¶ 4. The officer on duty phoned Dr. Robert Meacham III, the jail doctor, who gave authority for the jail personnel to double the plaintiff's pain medication. Id. The plaintiff received the prescribed double dose of pain medication four times a day, each day, as provided to him by the jail personnel. *See* Deposition of Eric Akins, p. 22, lines 20 - 22. Thereafter, on August 12, 1998, approximately four days later, the plaintiff saw Dr. Meacham. *See* Deposition of Eric Akins, p. 24, lines 1-3; county defendants' itemization of facts in support of motion for summary judgment, ¶ 5. Dr. Meacham examined the plaintiff's arm and determined that he was fine. Deposition of Eric Akins, p. 24, lines 5 - 6. Thereafter, upon further examination, Dr. Meacham directed that the plaintiff be transported to Campbell Clinic where he underwent surgery on his arm. *See* Deposition of Eric Akins, p. 24 - 25; county defendants' itemization of facts in support of motion for summary judgment, ¶ 5 & 6. The plaintiff remained hospitalized for approximately five days. *See* Deposition of Eric Akins, p. 25,. During his hospital

[1]Dr. Black is not a party to this action.

[2]The plaintiff testified that while Dr. Black did not give him, personally, any instruction regarding care of his wound, the doctor did provide some instruction to the officers present with the plaintiff at the hospital. *See* Deposition of Eric Akins, pp. 20 - 21.

stay the plaintiff was under the care of two independent physicians, neither of whom are parties to this suit. Upon his release from the hospital, on or about August 19, 1998, the plaintiff was returned to the Desoto County jail and then was released from jail on August 20, 1998. *See* Deposition of Eric Akins, p. 26, lines 8-10; county defendants' itemization of facts in support of motion for summary judgment, ¶ 7.

The plaintiff was indicted for the original charges which were the cause of his arrest on August 8, 1998. *See* Complaint, ¶ 19; county defendants' itemization of facts in support of motion for summary judgment, ¶ 8. As a result the plaintiff was arrested on or about November 27, 1998 and was again placed in custody at the Desoto County jail. Id. The plaintiff was convicted of the above stated offense and remained in custody at the Desoto County jail until his release to the Mississippi Department of Corrections on March 17, 1999 Id. During this time period, the plaintiff saw Dr. Meacham approximately ten times both for his arm and for another unrelated injury.[3] *See* Deposition of Eric Akins, p. 24. The plaintiff testified that in his opinion there really was not anything Dr. Meacham or the Desoto County jail personnel could have done for his arm at that time besides taking him to physical therapy. *See* Deposition of Eric Akins, p. 31, lines 21 - 25 through p. 33, lines 1 - 8; county defendants' itemization of facts in support of motion for summary judgment, ¶ 9 & 10. The plaintiff has stated that despite requests for physical therapy to the Desoto County jail and afterward to the Greenwood Leflore Restitution Center, where the plaintiff was next incarcerated, he never received any such therapy. *See* Complaint, ¶ 22; Deposition of Eric Akins, p. 33, line 25 through p. 34, line 2; p. 36, lines 9-11. Nevertheless, upon entering the Restitution Center in March 1999, the plaintiff signed a form stating that the scar tissue on his right arm did not cause him any problems. *See* Mississippi Department of Corrections form signed by Eric Akins, dated March 18, 1999, attached as Exhibit A to the deposition of Eric Akins; county defendants'

[3]The plaintiff received a wound from a dog bite during his arrest on November 27, 1998. He saw Dr. Meacham a number of times for the dog bite wound and had no complaint regarding the treatment of said injury. The injury from the dog bite is not an issue in this suit. *See* Deposition of Eric Akins, p. 69, lines 8 - 22.

itemization of facts in support of motion for summary judgment, ¶ 12.

The plaintiff has stated that defendants James Riley and Janet Taylor did not personally do anything to him, simply that any action by either one of them was in their respective capacity as an employee of the jail. *See* Deposition of Eric Akins, p. 43, line 9 through p. 44, line 1. Further, the plaintiff has stated that no one outside the Desoto County Sheriff's Department, absent Dr. Meacham, had done anything whatsoever to him. Id. at p. 44, lines 2 - 9. Regarding defendant Meacham, the plaintiff stated that he never saw him in any capacity other than as the doctor for the Desoto County jail. *See* Deposition of Eric Akins, p. 80, lines 1 - 5.

The plaintiff was released from custody on July 23, 1999 and is no longer under the care and control of any of the defendants. *See* Complaint, ¶ 24. Since his release, the plaintiff has not seen any doctors on a regular basis regarding his arm. *See* Deposition of Eric Akins, p. 72, lines 2 - 7. Also since that time has gone a hospital one time for pain in his arm. Id.

The plaintiff filed the instant action on August 6, 1999 pursuant to 42 U.S.C. § 1983, alleging violation of his Fifth, Eighth, Ninth and Fourteenth Amendment rights by the defendants' negligent and/or intentional deprivation of medical needs and endangering his health and well being and failure to train and/or supervise jail personnel, and seeking general and punitive damages against the defendants. A stipulation of dismissal was filed on May 5, 2000 dismissing the plaintiffs claims against James Anderson and Arthur Smith. *See* Akins v. Riley, et al, Cause No. 2:99cv160-B-B, docket entry #23. The county defendants filed a motion for summary judgment on June 20, 2000 and a supplement thereto on June 26, 2000. *See* Akins v. Riley, et al, Cause No. 2:99cv160-B-B, docket entry #27 & 30. Defendant Meacham filed a motion for summary judgment on June 22, 2000. *See* Akins v. Riley, et al, Cause No. 2:99cv160-B-B, docket entry #29. The plaintiff has failed to file a response to any of these motions.

LAW

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed.

2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing'... that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by ... affidavits, or by the 'depositions, answers to interrogatories, and admissions on file' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). And a court may not grant summary judgment based solely on a party's failure to respond. John v. Louisiana, 757 F.2d 698, 708-09, 710-13 (5th Cir.1985). Instead, Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to a party's case and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. However, once a properly supported motion for summary judgment is presented, the nonmoving party must rebut with "significant probative" evidence. Ferguson v. National Broadcasting Co., Inc., 584 F.2d 111, 114 (5th Cir. 1978). In other words, "the nonmoving litigant is required to bring forward 'significant probative evidence' demonstrating the existence of a triable issue of fact." In Re Municipal Bond Reporting Antitrust Lit., 672 F.2d 436, 440 (5th Cir. 1982). Before finding that no genuine issue of material fact exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Cor., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986).

A. 42 U.S.C. § 1983 CLAIMS

The plaintiff has brought claims against the defendants Riley, Taylor and Meacham in their individual and official capacities and against Desoto County Mississippi alleging that they either negligently or intentionally denied him medical care. The plaintiff further alleges that this denial of medical care was the result of a policy or custom of the defendants in denying medical care to inmates, a failure to train jail personnel and/or failure to supervise jail personnel. The elements of

a § 1983 claim are: (1) a deprivation of rights secured by the constitution, (2) by a person acting under the color of state law. Evans v. City of Marlin, Texas, 986 F.2d 104 (5th Cir. 1993) quoting, Daniels v. Williams, 474 U.S. 327, 330-331, 106 S. Ct. 662, 664-665, 88 L. Ed. 2d 662 (1986). In order to establish that the defendants, in their official capacities, and Desoto County are liable under § 1983 the plaintiff must not only establish the basic elements as stated above, but he must also show that: (1) the existence of a policy, (2) of the local government's policy maker, (3) that affirmatively caused the plaintiff to be subjected to a deprivation of his constitutional rights. *See* Palmer v. City of Antonio, Texas 810 F.2d 514, 515 (5th Cir. 1987).

Before engaging in further analysis of this cause, the court notes that the plaintiff has admitted that defendants Riley and Taylor did not do anything to him in any capacity other than in their official capacities. *See* Deposition of Eric Akins, p. 43, line 9 through p. 44, line 1. Further, the plaintiff has stated that no one outside the Desoto County Sheriff's Department, absent Dr. Meacham, had done anything whatsoever to him. Id. at p. 44, lines 2 - 9. Regarding defendant Meacham, the plaintiff stated that he never saw him in any capacity other than his official capacity as the doctor for the Desoto County jail. *See* Deposition of Eric Akins, p. 80, lines 1 - 5. As the plaintiff has conceded that he has suffered no harm by any of the three individual defendants while in their individual capacities; said defendants are entitled to summary judgment as a matter of law regarding the plaintiffs claims against them in their individual capacity.

1. MEDICAL CARE

A § 1983 claim may stand where a prisoner's serious medical needs are met with subjective deliberate indifference. *See* Farmer v. Brennan, 511 U.S. 825, 837, 128 L. Ed. 2d 811, 114 S. Ct. 1970 (1994); Stewart v. Murphy, 174 F.3d 530, 533 (5th Cir. 1999). "[M]ere negligence in giving or failing to supply medical treatment [will] not support an action under Section 1983." Williams v. Treen, 671 F.2d 892, 901 (5th Cir. 1982); *see also* Jackson v. Cain, 864 F.2d 1235, 1246 (5th Cir. 1989). Instead, the subjective deliberate indifference standard requires that a prison official must know of "an excessive risk to inmate health or safety" and disregard it in order to give rise to a §

1983 claim. Farmer, 511 U.S. at 837; Stewart, 174 F.3d at 533. This same subjective deliberate indifference standard has been applied to pre-trial detainees as well as convicted inmates. *See* Hare v. City of Corinth, 74 F.3d 633, 648 (5th Cir. 1996). In the instant case it is clear that the plaintiff did receive medical care, as he was taken to the hospital for treatment prior to being taken to jail and thereafter, the jail doctor was consulted concerning the plaintiff's pain at or around the time of his admittance to the jail. The jail doctor then saw the plaintiff at the jail approximately four days later. Thus, the plaintiff cannot claim that he was denied medical care, but rather that said care was delayed. The Fifth Circuit has held that in cases such as the one at bar, arising from delayed medical attention rather than a clear denial of medical attention, that a plaintiff must demonstrate that he suffered substantial harm resulting from the delay in order to state a claim for a civil rights violation. Mendoza v. Lynaugh, 989 F.2d 191, 193 (5th Cir. 1993); Campbell v. McMillin, 83 F. Supp. 2d 761 (S.D. Miss. 2000).

In the instant cause, taking all facts and inferences in favor of the plaintiff, it is clear that the plaintiff has not demonstrated that the defendants were subjectively deliberately indifferent to his known serious medical needs. It is undisputed that the plaintiff's arm was injured prior to his arrest on August 8, 1998. It is further undisputed that he was transported to the hospital and his arm treated before he was taken to jail. Upon arriving at the jail the plaintiff complained of pain and the jail personnel phoned the jail doctor who provided instruction regarding treatment. Approximately four days later he saw the jail doctor and was then, at the instruction of the jail doctor, transported to the hospital for treatment including surgery. Thereafter, the plaintiff returned to the jail and was, within a day released. If, as the plaintiff claims, he was denied medical care for four days after he was initially treated at the hospital for his wound, the plaintiff has brought forth no evidence that he suffered substantial harm resulting from the delay. The court finds that the plaintiff has failed to bring forth any evidence regarding whether any Desoto County Jail official, named defendant or otherwise, knew of an excessive risk to his health or safety and disregarded it; the seriousness of his injury; the defendants' subjective intent to cause harm to the plaintiff; or the harm, if any, resulting

from a delay. Accordingly, the court finds that the plaintiff's claim of a constitutional violation due to the alleged denial of medical care must fail.

2. FAILURE TO TRAIN

The plaintiff has also brought claims against the defendants for failure to train and supervise jail personnel. *See* plaintiff's complaint, ¶ 30 & 31. The plaintiff claims that the defendants are liable and responsible for the actions of the jail personnel and that it was the custom and policy of the defendants to inadequately train and supervise the jail personnel. According to the plaintiff, these acts and/or omissions by the defendants under the policy and/or custom of the jail resulted in violations of constitutionally protected rights and § 1983.

In order for a plaintiff to show liability for a failure to train jail employees, he must establish the existence of a policy or a custom which affirmatively caused the plaintiff to be subjected to a deprivation of a constitutional right. Palmer v. San Antonio, 810 F.2d at 516. The Fifth Circuit has held that held that proof of a single incident ordinarily is insufficient to hold a municipality liable for inadequate training. Snyder v. Trepagnier, 142 F.3d 791, 798 (5th Cir. 1998). Instead, a plaintiff must demonstrate "at least a pattern of similar incidents in which the citizens were injured . . . to establish the official policy requisite to municipal liability under section 1983." Snyder, at 798 quoting, Rodriguez v. Avita, 871 F.2d 552, 554-55 (5th Cir. 1989); *See* Bd. Of County Comm'r of Bryan County v. Brown, 520 U.S. 397, 405, 137 L. Ed. 2d 626, 117 S. Ct. 1382 (1997), reh'g denied 520 U.S. 1283, 138 L. Ed. 2d 227, 117 S. Ct. 2472. According to the Fifth Circuit,

> The "official policy" requirement may be met in at least three different ways: (1) "When the appropriate officer or entity promulgates a generally applicable statement of policy and the subsequent act complained of is simply an implementation of that policy." (2) Where no "official policy" was announced or promulgated but the action of the policymaker itself violated a constitutional right; and (3) Even when the policymaker fails to act affirmatively at all, if the need to take some action to control the agents of the local governmental entity "is so obvious, and the inadequacy [of existing practice] so likely to result in the violation of constitutional rights, that the policymaker. . . can reasonably be said to have been deliberately indifferent to the need."

Burge v. Parish of St. Tammany, 187 F.3d 452, 470 (5th Cir. 1999), reh'g denied, 1999 U.S. App. LEXIS 32138 (5th Cir.1999). In the instant cause the plaintiff has failed to bring forth any evidence

of a policy or custom that caused any harm or deprivation of constitutional rights to the plaintiff. Although the plaintiff alleges in his complaint that the defendants ". . . have adopted policies, practices and procedures which the defendants knew or reasonably should have known, would be ineffective in delivering medical treatment and care . . .thereby endangering the plaintiff's health and well-being in violation of rights secured to the plaintiff. . . .", he never explains, supports or provides any evidence beyond allegations and conclusions which points to the constitutionally inadequate policy or custom, nor has the plaintiff presented any evidence or even a claim regarding any incident outside of the incident alleged in order to establish a pattern of incidents resulting from the alleged policy. *See* Plaintiff's Complaint, ¶ 30. The defendants have provided deposition testimony and jail records which show the policies of the Desoto County Jail to be constitutionally adequate. *See* jail records attached as Exhibit D to county defendants' motion for summary judgment. The court therefore holds that the plaintiff has failed to present a genuine issue of material fact regarding his claims of failure to train and supervise jail staff and the defendants are entitled to judgment as a matter of law on this issue.

B. MEDICAL MALPRACTICE

Although the complaint is not clear, it appears that the plaintiff has attempted to make a claim for medical malpractice against all defendants, and specifically Dr. Meacham. In order to establish a claim for medical malpractice, a plaintiff must first establish the existence of a doctor - patient relationship and its attendant duty. Boyd v. Lynch, 493 So.2d 1315, 1318 (Miss. 1986). Thereafter, expert testimony is generally necessary in order for a plaintiff to (1) identify and articulate the requisite standard of care, (2) establish that the doctor failed to conform to that standard of care, and (3) that the failure to comply with the requisite standard of care was the proximate cause of the plaintiff's injury. Id. Mississippi physicians are bound by nationally-recognized standards of care; they have a duty to employ "reasonable and ordinary care" in their treatment of patients. Phillips v. Hull, 516 So. 2d 488, 491 (Miss. 1987); Hall v. Hilbun, 466 So. 2d 856 (Miss. 1985). In general, case law demands that "in a medical malpractice action, negligence cannot be established

without medical testimony that the defendant failed to use ordinary skill and care." Hull, 516 So. 2d at 491; *see also* Walker v. Skiwski, 529 So. 2d 184, 187 (Miss. 1988) ("Our general rule is that the negligence of a physician may be established only by expert medical testimony.") (citing Cole v. Wiggins, 487 So. 2d 203, 206 (Miss. 1986)). While expert testimony is not always required, the testimony of a lay person alone will only be sufficient to establish things which are factual in nature or generally seen as within the common knowledge of lay persons. Drummond v. Buckley, 627 So.2d 264, 268 (Miss. 1993); reh'g. denied, 1993 Miss. LEXIS 622 (Miss. Dec. 23, 1993). An expert is generally required to show that the physician's breach of duty was the proximate cause of the plaintiff's injury. Palmer v. Biloxi Regional Medical Center, Inc., 564 So.2d 1346, 1355 (Miss. 1990).

In this case, the plaintiff has failed to designate an expert witness. *See* Plaintiff's responses to county defendants' interrogatories and requests for production attached to the county defendants' motion for summary judgment as Exhibit C, Response to Interrogatory #2 and Response to Request for Production #2. Failure to designate an expert precludes the plaintiff from relying on expert testimony at trial. Geiserman v. MacDonald, 893 F.2d 787, 791 (5th Cir. 1990). With regard to the plaintiff's claims of medical malpractice, actions such as this expert medical testimony is a vital means to establishment of the plaintiff's prima facie case. Without such testimony, the plaintiff's claims must fail. Given that the plaintiff has no evidence from an expert regarding the issue of standard of care or the issue of causation, the plaintiff is unable to establish the necessary elements of his claim for medical malpractice and as such, said claim must also fail.

CONCLUSION

For the forgoing reasons, the court finds that the defendants' motions for summary judgment should be granted. An order shall this day issue accordingly.

THIS, the ____ day of September, 2000.

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NEAL B. BIGGERS, JR.
CHIEF JUDGE
IN THE UNITED STATES DISTRICT COURT

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ORDER

In accordance with the memorandum opinion this day issued, it is so **ORDERED**:

That defendant Robert Meacham III, M.D.'s motion for summary judgment is **GRANTED**;

That the motion of defendants James Riley, Janet Taylor, and Desoto County, Mississippi for summary judgment and supplement thereto is **GRANTED**;

And that the plaintiff's claims are **DISMISSED with prejudice.**

THIS, the ____ day of September, 2000.

_____
NEAL B. BIGGERS, JR.
CHIEF JUDGE